IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.562 OF 1988

Smt.Sabira Abdul Aziz ...Appellant

Vs.

The Assistant Engineer,
Maharashtra State Electricity Board,
Thane ...Respondent

Shri S.M.Kamble h/f A.P.Mundargi for the Appellant

CORAM: A.S.OKA, J.
DATED: AUGUST 4, 2004.

ORAL JUDGMENT :

1. On November 18, 1988 this Court admitted the Second Appeal by passing the following order :

> . "Counsel for the parties are heard. That there was an electric connection given to appellant-plaintiff for the old premises is not disputed. It is alleged that this connection was unauthorisedly shifted by the appellant to the new premises. That the new premises received electricity from January to about May 1981 is admitted. It is to be seen whether the transfer can be said to be illegal or unauthorised in the background of the above. The S.A. raises a substantial question of law vide ground No.1 in the appeal memo. Therefore, it is admitted. Mr.Patankar will waive service upon the Respondent."

2. I have the learned Advocate for the Appellant on the substantial question of law framed by this Court. The Record shows that the court service notice is served on the Respondent. None appears for the Respondent.

3. The Appellant is the original Plaintiff. The case of the

Appellant is that the Appellant is running a textile industry at House No.655, Gauripadi, Bhivandi, Thane. Initially, the Appellant was having business in House No.57. The case of the Appellant is that the business in House No.57 was a family business and as a result of partition effected in the year 1981, the Appellant was given House No.655 for carrying out business. Accordingly, he shifted the powerloom in House No.57 to House No. 655. The case of the Appellant is that he made an application to The Maharashtra State Electricity Board for shifting the power connection in House No.57 to House No.655. He obtained no objection certificate from the Municipality and thereafter the meter was shifted to House No.655. The case in the plaint is that on 10th May 1982 the Officers of M.S.E.B. visited the House no.655 and threatened to disconnect the power supply. Therefore, a suit for perpetual injunction was filed by the Appellant against the Assistant Engineer of M.S.E.B., Kalyan Board, Bhivandi.

4. The suit was resisted by the Respondent by filing written statement. Apart from various technical contentions raised in the written statement a specific contention was raised that the meter and electricity connection was never shifted by M.S.E.B. from House No.57 to House No.655. A contention is also raised that the meter and other equipment is the exclusive property of the Electricity Board which has been shifted by the Appellant without prior approval of the Board. The case of the Respondent is that in view of the

unauthorised shifting, the Respondent was entitled to disconnect the power supply.

5. The learned Counsel for the Appellant submitted that the Appellant has obtained no objection certificate from the Municipality and application was made for transfer of electricity connection. He submitted that transfer was made by the Respondent and in fact subsequently reconstruction charges were paid by the Appellant and bills were issued by the Respondent to the Appellant. He submitted that the Appellant was entitled to perpetual injunction.

6. I have considered the submissions made by the learned Counsel for the Appellant. I have also gone through the record of the suit. There is no evidence produced by the Appellant to show that transfer of the meter and electricity connection was actually made by the electricity Board from House No.57 to House No.655. All that is established is that the application for such transfer was made by the Appellant and that no objection certificate for such transfer was obtained from the Municipality. The Courts below, therefore, held that there was no evidence to show that the meter and electricity connection was transferred by the Electricity Board on the basis of application made by the Appellant. In fact, evidence on record shows that the bills of electricity charges issued by the Electricity Board were showing old address of the Appellant i.e. House no.57. The Appellant

has not pleaded the existence of any right in his favour to transfer the meter and electricity connection without the permission of the Electricity Board. In the circumstances, no fault can be found with the findings recorded by the Courts below. Second Appeal deserves to be dismissed.

7. At this stage the learned Counsel for the Appellant submitted that on 18th November 1988 this Court directed the parties to maintain status-quo. He submitted that the order of status-quo may be continued for some time to enable the Appellant to make a fresh application for transfer of electricity meter to House No.655. He stated that the said application will be made without prejudice to his rights and contentions. The said request is reasonable.

8. Hence I pass the following order :

i) Second Appeal is dismissed with no order as to costs.

ii) The order of status-quo passed by this Court on 18th November 1988 will continue to operate for a period of 16 weeks from today.

iii) It will be open for the Appellant to make appropriate application to Maharashtra State Electricity Board for transfer of meter and electricity connection from House No.57 to 655. If any such application is made by the Appellant, the same will be considered by the M.S.E.B. in accordance with law.

Judge.